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June 4, 2001

VIA HAND DELIVERY

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Room TW-A325  
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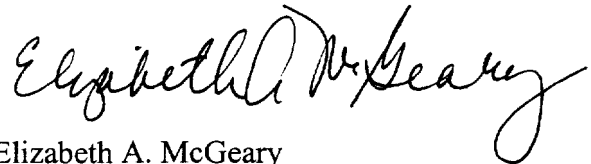
Re: GN Docket No. 01-74  
Reply Comments of Cox Broadcasting, Inc.

Dear Ms. Salas:

On behalf of Cox Broadcasting, Inc. ("Cox"), we submit herewith an original and four copies of Cox's reply comments regarding the FCC's *Notice of Proposed Rule Making In the Matter of Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)* in GN Docket No. 01-74. Also enclosed is a diskette copy of Cox's reply comments.

Please contact the undersigned if you have any questions about this submission.

Respectfully submitted,



Elizabeth A. McGeary

Enclosures

cc: International Transcription Service, Inc.  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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RECEIVED  
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In the Matter of )  
 )  
Reallocation and Service Rules for the 698-746 ) GN Docket No. 01-74  
MHz Spectrum Band (Television Channels 52-59) )

To: The Commission

**REPLY COMMENTS OF COX BROADCASTING, INC.**

Cox Broadcasting, Inc. ("Cox"), by its attorneys, hereby submits this reply in response to comments filed regarding the *Notice of Proposed Rule Making* in the above-captioned proceeding concerning the reallocation of Channels 52-59 or the "Lower 700 MHz Band."<sup>1</sup> Through subsidiaries, Cox owns commercial television stations and translators licensed to various sized communities throughout the United States.

In the *Notice*, the Commission sought comment regarding a number of issues concerning the reallocation of the Lower 700 MHz Band from incumbent broadcasters to new licensees. By this reply, Cox supports the comments filed in this proceeding urging the Commission to ensure full protection of incumbent broadcast services on the Lower 700 MHz Band. The Commission also should protect low power television ("LPTV") and translator stations from interference caused by newly licensed services operating in the Lower 700 MHz Band prior to the end of the DTV transition. Cox also supports the Commission's proposal to reallocate the Lower 700 MHz Band for new broadcast services as well as new fixed and mobile services and urges the

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<sup>1</sup> Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Notice of Proposed Rule Making*, GN Docket No. 01-74, FCC 01-91 (rel. Mar. 28, 2001) ("*Notice*").

Commission to adopt rules that permit flexible use by new licensees in the Lower 700 MHz Band.

**I. IF NEW LICENSEES BEGIN OPERATIONS PRIOR TO THE END OF THE DTV TRANSITION, THE COMMISSION MUST ENSURE TOTAL PROTECTION OF INCUMBENT BROADCAST OPERATIONS.**

The Commission clearly has stated that new licensees in the Lower 700 MHz Band will be prohibited from causing *any* interference to stations located within or immediately adjacent to the Lower 700 MHz Band.<sup>2</sup> In their comments, the National Association of Broadcasters; the Association of Maximum Service Television, Inc. (“MSTV”); the Association of America’s Public Television Stations; and HIC Broadcast, Inc. (“HIC”) supported the Commission’s policy of affording full protection to adjacent and co-channel broadcast operations from interference caused by new licensees in the Lower 700 MHz Band.<sup>3</sup> Cox agrees: adjacent and co-channel broadcast operations must have full interference protection against new services in the Lower 700 MHz Band.

**A. The Commission May Ensure Total Protection Of Adjacent Channel Broadcast Operations Through The Use Of A Guard Band.**

In the *Notice*, the Commission sought comment on the type of restrictions it should adopt to ensure that broadcast operations on Channel 51 would be protected from new operations in the Lower 700 MHz Band.<sup>4</sup> Some commenters opposed the use of a guard band to protect Channel

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<sup>2</sup> *Id.* at ¶ 15 (“Broadcasters authorized under the current rules are *entitled* to protection or accommodation from new licensees) (emphasis added).

<sup>3</sup> Comments of the National Association of Broadcasters at p. 4; Comments of the Association for Maximum Service Television, Inc. (“MSTV Comments”) at p. 9; Comments of the Association of America’s Public Television Stations at p. 4; and Comments of HIC Broadcast, Inc. (“HIC Comments”) at pp. 3, 6.

<sup>4</sup> *Notice* at ¶ 16.

51 broadcast operations because they believe it unnecessary. HIC, however, argued that the use of a guard band in the lower portion of the Lower 700 MHz Band would alleviate the risk of highly localized interference to television reception from nearby low-power, portable and mobile transmitters from two-way operations.<sup>5</sup> Cox also would support the use of a guard band as a means of ensuring protection of Channel 51 operations.

**B. The Commission Should Adopt The Same Methodology For Protecting Analog And Digital Stations As It Did For The Upper 700 MHz Band.**

The Commission sought comment whether it should adopt the same methodology for protecting analog stations in Channels 52-59 as it did for Channels 60-69 (the “Upper 700 MHz Band”).<sup>6</sup> That methodology “specifies minimum separation distances based on the various heights and powers of land mobile stations to prevent harmful interference to incumbent analog television operations from new service providers”<sup>7</sup> and uses a protection requirement of 40 dB desired-to-undesired (D/U) signal ratio. Cox joins HIC in supporting the Commission’s proposed D/U protection requirement as adopted in the Upper 700 MHz Band proceeding.<sup>8</sup> Cox also supports the Commission’s proposal to adopt the same signal strength limits that regulate land mobile operations’ protection of analog stations for protecting digital stations.<sup>9</sup>

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<sup>5</sup> HIC Comments at p. 7.

<sup>6</sup> Notice at ¶ 30.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*; see Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Agency Communications Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, ¶ 152 (1998).

<sup>9</sup> Notice at ¶ 31.

**C. Broadcast Permittees With Approved Construction Permits Deserve The Same Interference Protection As Operating Stations.**

Cox identified no commenters that specifically addressed whether stations with approved construction permits should be treated the same as operating stations and thus receive full interference protection from new licensees in the Lower 700 MHz Band. Cox agrees with the Commission that stations with granted construction permits are “sufficiently far enough along [in] the licensing process that they should be treated the same as operating TV stations and receive protection from new service providers during the DTV transition period.”<sup>10</sup> At this point, permittees have invested significant amounts of time and money to plan and construct the authorized facilities. It would be inequitable to deny permittees the same interference protection as that provided for existing licensees. Moreover, there are only twelve approved analog construction permits in Channels 52-59.<sup>11</sup> Thus, affording absolute interference protection to permittees will have minimal impact on the provision of new services in the Lower 700 MHz Band. Accordingly, Cox urges the Commission to afford the same interference protection to permittees as to licensees.

**D. Protection Of Low Power And Translator Stations From Interference By New Operations Would Preserve Existing Service And Facilitate The DTV Transition At Little Marginal Cost.**

Cox urges the Commission to adopt rules that would ensure that LPTV and translator stations operating on the Lower 700 MHz Band are protected from interference by new licensees.<sup>12</sup> As the Commission recognizes, “LPTV operators offer important services to

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<sup>10</sup> *Id.* at ¶ 21. Cox also urges the Commission to protect LPTV and translator stations with approved construction permits.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* at ¶ 18.

specialized and minority audiences, foreign language communities, and rural areas.”<sup>13</sup>

Television translators also offer essential services by rebroadcasting the basic television service of analog and digital full power stations to mountainous and rural areas of the country that otherwise could not receive the full power station’s signal. Accordingly, in the past, the Commission has recognized the importance of LPTV and translator services by adopting rule changes to mitigate the impact of the DTV transition on these stations.<sup>14</sup> The Commission has taken the same approach in this proceeding by stating that it is “committed...to take reasonable additional steps to reduce the impact on such operations.”<sup>15</sup>

Through subsidiaries, Cox owns the following translators operating on Channels 52-59: K53AZ, Centralia, Washington (KIRO-TV); K54AO, Bremerton, Washington (KIRO-TV); K58BW, Everett, Washington (KIRO-TV); and K69FL, Puyallup, Washington (KIRO-TV).<sup>16</sup> Cox also has pending applications for a new translator on Channel 56 to serve Nixon, Nevada,<sup>17</sup> and a translator on Channel 51 to serve Fallon, Nevada.<sup>18</sup> Cox agrees with KNME Television

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<sup>13</sup> *Id.* at ¶ 28.

<sup>14</sup> *Id.* (stating that the Commission “adopted a number of rule changes in the *DTV Proceeding* to mitigate the impact on these stations” including permitting LPTV stations that are displaced by new DTV stations to apply for replacement channels and changes to the technical rules). See Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, *Sixth Report and Order*, 12 FCC Rcd 14588, ¶¶ 142, 144-145 (1997) (e.g., adopting channel displacement relief for LPTV stations, deleting taboo restrictions on the use of a channel seven channels below or fourteen channels above the channel of another LPTV station, permitting LPTV and translator stations to agree to accept interference).

<sup>15</sup> *Notice* at ¶ 28.

<sup>16</sup> K69FL filed a displacement application for Channel 54. FCC File No. BPTTL-19980601YQ. The Commission granted the application, but the station is not yet licensed.

<sup>17</sup> FCC File No. BPTTL-20000831AOM.

<sup>18</sup> FCC File No. BNPTT-20000831CGW. The translator, K51FN, currently is operating pursuant to Special Temporary Authority.

regarding the importance of the services provided by translator stations,<sup>19</sup> and therefore urges the Commission to protect LPTV and translator stations (including those with approved construction permits) from interference from new licensees concurrently operating in the Lower 700 MHz Band. The FCC also should not allow new licensees to displace LPTV stations and translators prior to the close of the DTV transition. Given the already significant encumbrance of the Lower 700 MHz Band by full power analog and digital broadcasters, the protection of LPTV and translator stations will have little marginal impact upon new entrants in the Lower 700 MHz Band but will ensure the preservation of existing over-the-air television services and contribute to the success of the DTV transition.

The Commission recognizes that the Lower 700 MHz Band “is significantly more encumbered with TV operations” than the Upper 700 MHz Band.<sup>20</sup> As a result, it is highly unlikely that the Lower 700 MHz Band could be cleared prior to the end of the DTV transition similar to the Upper 700 MHz Band. Accordingly, the new licensees on the Lower 700 MHz Band will be required to protect a significant number of incumbent broadcasters if there is concurrent use of the Lower 700 MHz Band. Given this level of spectrum congestion in the band, protection of translator and LPTV stations in the Lower 700 MHz Band will have minimal impact on the ability of new licensees to provide service prior to the end of the DTV transition. Moreover, as more broadcast stations transition to DTV service, translators will become even more important to continued, uninterrupted television service. It currently appears that DTV signal availability is at best comparable to analog television and possibly worse. As a result, DTV stations could require the use of more translators to serve as gap-fillers to remedy holes in

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<sup>19</sup> Digital Translators for Rural New Mexico by KNME Television at p. 3.

<sup>20</sup> Notice at ¶ 7.

coverage. Translators could be crucial to ensure there is no loss of service to viewers and may be required to achieve the necessary service coverage to trigger the 85% DTV penetration threshold that will signal the end of the DTV transition.<sup>21</sup>

Accordingly, Cox opposes Qwest Wireless LLC's ("Qwest's") proposal that the Commission require translators to terminate operations if a new licensee determines that potential interference will result.<sup>22</sup> The displacement of LPTV and translator stations will not alleviate congestion in the band and could extend the DTV transition. The Commission must protect these LPTV and translator stations from mandatory displacement by new services.

## **II. BY PERMITTING TRUE FLEXIBLE USE, THE COMMISSION WOULD PLACE SPECTRUM IN THE HANDS OF THE HIGHEST-VALUED USER.**

In the *Notice*, the Commission sought comment regarding the scope of the new licenses to be offered in the Lower 700 MHz Band,<sup>23</sup> and whether it should permit both new, full power broadcasting, in particular DTV and other digital broadcast operations, and wireless services to operate on the Lower 700 MHz Band.<sup>24</sup> In its comments, MSTV urged the Commission to permit a full range of broadcast and other broadband applications as well as two-way mobile services.<sup>25</sup> MSTV states that "[p]reserving maximum flexibility is the only sound way to deal with the uncertainties surrounding future use of this band in a manner that is consistent with the Commission's overall spectrum policy."<sup>26</sup> Cox agrees.

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<sup>21</sup> The DTV transition is scheduled to end in 2006 but will be extended in markets where general DTV market penetration is less than 85%. 47 U.S.C. § 309(j)(14)(B) (2000).

<sup>22</sup> Qwest Wireless, LLC Comments ("Qwest Comments") at p. 3.

<sup>23</sup> *Notice* at ¶¶ 40-45.

<sup>24</sup> *Id.* at ¶ 43.

<sup>25</sup> MSTV Comments at p. 5.

<sup>26</sup> *Id.*



Cox urges the Commission to give licensees the discretion to use the spectrum for full power broadcast services, translators to remedy shortfalls in DTV service areas, or wireless services. Such flexible use would be consistent with the Commission's "continued interest in the development of a variety of mechanisms to make spectrum markets more flexible and efficient in the choice of service to be offered by licensees and in the applicable service rules."<sup>27</sup> Moreover, the Commission notes that it seeks "to develop service rules that are not based on a Commission prediction of how these bands will ultimately be used, but instead enables us to establish maximum practicable flexibility."<sup>28</sup> Particularly in light of the rapid convergence of broadcast, wireless, and broadband services, it would be a mistake to adopt undue restrictions on the uses of the Lower 700 MHz Band.

Contrary to the Commission's policy of fostering flexible use of the spectrum, Cellular Telecommunications & Internet Association ("CTIA") and Qwest assert that the Commission should adopt a flat prohibition on the use of the Lower 700 MHz Band for broadcast television.<sup>29</sup> Specifically, CTIA opposes the allocation of the Lower 700 MHz Band to full power broadcast television,<sup>30</sup> and Qwest states that the Commission should not license any new broadcast-type services in the band.<sup>31</sup> By removing broadcast services from the possible new services on the Lower 700 MHz Band, CTIA and Qwest would erect entry barriers to the auction by excluding competitors who value the maximum, flexible use of the band and who would like the option of

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<sup>27</sup> Notice at ¶ 41.

<sup>28</sup> *Id.*

<sup>29</sup> Cellular Telecommunications & Internet Association Comments ("CTIA Comments") at p. 2-3; Qwest Comments at p. 5.

<sup>30</sup> CTIA Comments at p. 2.

<sup>31</sup> Qwest Comments at p. 5.

providing broadcast services on the Lower 700 MHz Band. Restricting use of the spectrum only to fixed and mobile services would reduce the number of bidders interested in the Lower 700 MHz Band auction, and thus, would artificially decrease the ultimate price to be paid for the spectrum. Such a result would contravene one of the intents of auctioning the spectrum, which is to award it to those who value it most. Accordingly, Cox urges the Commission to permit maximum flexible use of the Lower 700 MHz Band, which includes the provision of broadcast operations.

### **III. BY PERMITTING SPECTRUM SHARING, THE COMMISSION WOULD FOSTER INNOVATIVE, EFFICIENT USES OF SPECTRUM.**

In the *Notice*, the Commission requested comment whether it should permit incumbent broadcasters and new licensees to share spectrum in time and/or bits and whether it should permit broadcasters to share DTV facilities and spectrum during the DTV transition.<sup>32</sup> Cox identified no commenters that addressed these issues. Cox supports allowing incumbent broadcasters and licensees to share spectrum in time/and or bits and allowing broadcasters to share DTV facilities and spectrum. There is no reason for the Commission to prohibit parties from inventing creative market solutions to promote efficient use of spectrum. The Commission should afford parties the flexibility to negotiate private agreements to achieve efficient uses of spectrum and provide additional services to the public.

### **CONCLUSION**

In light of the foregoing, Cox urges the Commission to adopt the proposals herein regarding protection of incumbent broadcasters and flexible use of the Lower 700 MHz Band.

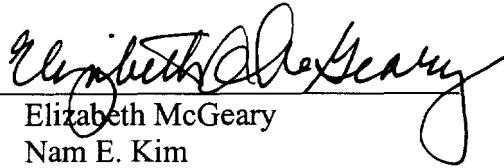
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<sup>32</sup> *Notice* at ¶ 136.

By adopting these proposals, the Commission would ensure the preservation of broadcast service to the public; foster innovative, efficient use of spectrum; and facilitate the DTV transition.

Respectfully submitted,

**COX BROADCASTING, INC.**

By:   
Elizabeth McGeary  
Nam E. Kim

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Dated: June 4, 2001

## CERTIFICATE OF SERVICE

I, Vanese Hawkins, a secretary at the law firm of Dow, Lohnes & Albertson, PLLC, do hereby certify that on this 4th day of June, 2001, the foregoing "Reply Comments of Cox Broadcasting, Inc." was served via first class mail (except where hand delivery is noted by an asterisk) to the following:

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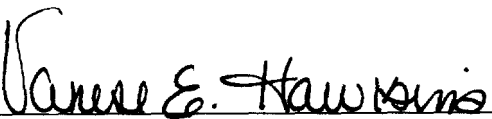
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